

## Pohle, David

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**From:** Pohle, David  
**Sent:** Tuesday, July 28, 2015 4:29 PM  
**To:** McKenna, Douglas; Modigliani, Justine  
**Subject:** Background - FW: Web Inquiry Assigned: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

Our intern, Ben, investigated this matter. The site is being logged, but the proposed mine is on hold because the town may not allow it to be constructed. Regarding stormwater allegations, you could probably email John Clancy of DEC as the email address below.

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**From:** Linthicum, Benjamin  
**Sent:** Tuesday, July 28, 2015 11:20 AM  
**To:** Pohle, David  
**Cc:** Montella, Daniel; Cantilli, John  
**Subject:** RE: Web Inquiry Assigned: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

Potential complaints for EPA:

- Lack of storm water control measures: no evidence given.
- Risk of future pollution from mine being upslope from wetlands and stream. While this could be concern at a later date, it is currently only speculation.
- Permitting fill burial on slope: While this wouldn't normally be a problem, this could lose soil could increase the risk of runoff into the downslope stream and wetlands.
- Wetland and stream impacts: Specifically "silt and sedimentation" from the runoff of the cleared lands above [the wetlands and stream]". The USACE has visited the site and, according to emails from Dan, Margaret Crawford A LRB stated that there were no wetlands on site the mining site. However there are wetlands downslope from the mining site – a portion of with are within the property's boundary (within property's boundary but not slated to be mined). It is also worth noting, Dr. V. M. Fichera stated the stream is "adjacent to a major town aquifer"
  - *"We walked the perimeter of the proposed mine. We found that the wetlands are located outside of the proposed limits of mine. Due to some concerns associated with the grades, the applicant modified the plan to reduce the encroachment into the slopes that go down to the wetland."* - Crawford, Margaret A LRB

Out of Dr. V. M. Fichera's several complaints, none appear to have evidence. The petitioner surmises that after forest clearing "in summer 2014 [and] fall 2014" that "heavy snows and heavy rains this spring and summer" could have caused silt accumulation and sedimentation in Sterling creek and nearby wetlands. Again, the petitioner does not allege proof of these activities, but rather is asking that a study be conducted to determine if impacts have occurred. I assume the Corps inspector would have noted siltation control measure when they visited, no? Also, we may want to review the mining applicants "modified plan" to ensure there is an adequate buffer to the wetland (not sure if this is a task we perform). In all, the one piece that the EPA might handle would be the wetland and stream impact study, and wouldn't that be conducted by the DEC?

From Lakeshore News July 8<sup>th</sup>, 2015:

*"it would be located within 1,000 feet of 29 structures, placing it at odds with Sterling land use regulations, which state that at no time shall any sand, gravel, quarry, mining or excavation be permitted within 1,000 feet of any structure."*

*“The DEC issued a “negative declaration” May 4, 2015, saying that the proposed mine will not have a significant effect on the environment and that a draft Environmental Impact Statement would not be required. “ -*

<http://thelakeshorennews.com/2015/07/08/martville-mines-future-remains-murky/>

Here is a link the DEC press release regarding their negative determination. It does not mention runoff and say slopes range from 0-8% [http://www.dec.ny.gov/enb/20150506\\_not7.html](http://www.dec.ny.gov/enb/20150506_not7.html)

- Ben

P.S. One more alleged complaint, *“I am not asking the Army Corps to regulate run-off -- I am asking it to actually care about fill and/or the potential for fill in what I am sure are regulated waters, Mr. Ferlito and his perhaps fictitious "Maggie" notwithstanding.” - Dr. V. M. Fichera’s*

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**From:** Pohle, David

**Sent:** Monday, July 27, 2015 4:54 PM

**To:** Linthicum, Benjamin

**Cc:** Montella, Daniel; Cantilli, John

**Subject:** RE: Web Inquiry Assigned: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

OK. Good. Now I would like you to delve into this some more.

Read it through a couple more times and try to extract what exactly the complainant is requesting from EPA. There is a lot going on here, and the writer has issues with multiple agencies. Please narrow down just what he/she wants of us at this moment, so that we can respond to that.

Also, double check whether there is evidence presented of filling wetlands or the creek. From my quick read, without viewing the attachments, there is no evidence presented. Only a guess that probably rains are causing the wetlands and creek to get filled with sediment.

Thirdly, google the name of the mine and see if you can find out more about what is going on.

Here is my initial “take” on this: It is a proposed mine that is regulated by the DEC Bureau of Mines. The mine requires a DEC permit. That permit requires documentation of compliance with various state and federal laws. Among other things, the applicant probably has a wetland delineation done, and the Corps went to the site to confirm the wetland boundary. The DEC and the Corps are probably communicating over whether or not the mine would be outside wetlands, or inside wetlands partly and maybe needing a permit. (This is, of course, not an enforcement issue for us.) It appears as if the mining applicant has gone ahead and logged the proposed mine site in advance. This is where things get complicated. Silviculture is subject to lots of exemptions. Silviculture may be exempt from the requirements for stormwater control (though I am not certain). It is possible that the applicant for the mine is logging with no stormwater controls, and maybe none are required if logging is exempt. But, and here’s a big question – If the intent is really to mine the site, is the logging a part of the mining project (clearing as the first stage of the mine construction) or is logging a *bona fide* separate operation? Would there be logging if there were no mine proposal? If the logging is really an activity of clearing for the mine, should it then be subject to stormwater controls even if logging is otherwise exempt from such controls.

As for filling of wetlands, if the logging resulted in discharges of sediment material that has “the effect of fill,” then it could be a violation of CWA404 unless “best management practices” were used to control runoff, in accordance with logging profession standards.

Bottom line: This appears to be an instance of a complainant taking issue with a proposed mine construction, and seeking to make sure that the government agencies are dotting all the "i"s and crossing all the "t"s. There may be stormwater violations (that would get referred to DEC, but they are already involved), and there may be wetlands fill violations from runoff (which we would refer to the Corps, but the Corps has already recently visited the site). In the end, this complaint should probably be passed off to John Cantilli as something non-enforcement for him to deal with as a matter of a private citizen expressing objections to a proposed project that may have wetland impacts.

Dave

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**From:** Linthicum, Benjamin

**Sent:** Monday, July 27, 2015 3:37 PM

**To:** Pohle, David

**Subject:** RE: Web Inquiry Assigned: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

A relatively small amount of clearing occurred between 2009 and 2013. Then a much larger amount of clearing occurred cleared between 11-24-2014 and 04-04-2015.

Soil Key:

- PnE -
  - 30% palmyra Somewhat excessively drained
  - 25% alton Excessively drained
  - 25 % howard Well drained
- AmA – 80% Alton well drained
- Sn – 75% Sloan – Poorly Drained
- CmB – 85% Colonie – Well Drained
- DuD3 – Dunkirk Silt Loam Well Drained
- Wmb – Williamson Silt Loam Moderately Well drained
- Ee – Eel Silt Loam Moderately Well drained
- AI - Alluvial Land – Very Poorly Drained
- DvE - 80% Dunkirk (See above)

DARTER indicates that the only nearby permit is for "Ferlito, Christopher (Martville Mine); Site visit associated with proposed mining operation that may or may not impact wetlands and/or streams."

**Summary:**

It appears a small >1 acre of land clearing occurred around 2010. Then a larger ~8 Area timber sale occurred early 2015. The NWI and soils on site do not indicate presence of wetland onsite. However, the NWI and soils just off site indicate the site is surrounded on 3 sides by wetlands. The USGA topo map indicates that all of the potential wetland are downhill from the site in question. Furthermore, there is stream about ~400ft downhill from the site. The complaint alleges siltation and runoff. Given lack of siltation control measures, runoff and siltation would be a risk to waters of the US at this site.

-Ben

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**From:** Pohle, David

**Sent:** Monday, July 27, 2015 10:07 AM

**To:** Linthicum, Benjamin

**Subject:** FW: Web Inquiry Assigned: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

After you figure it out, we need to draft a response that goes through a special system. It probably has a deadline for response of "yesterday," as would be typical.

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**From:** Montella, Daniel

**Sent:** Monday, July 27, 2015 9:01 AM

**To:** Pohle, David

**Subject:** FW: Web Inquiry Assigned: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

I assigned this to you. In case you don't see the notification, the incoming is below

- Dan

**From** "V. Fichera" <[vmfichera@gmail.com](mailto:vmfichera@gmail.com)>

**Delivered Date** 07/23/2015 03:53 PM

**Subject** Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

Nota Bene:

The email below contains information concerning the status of the land at 13181 Sanford Road in Martville from September 2014 through June 2015, providing suspicion of runoff silt and sedimentation in the adjoining wetland and creek.

The documentation herein provides evidence of logging pre-October 2014, which could have endangered the habitat of the Indiana myotis bat and potentially other endangered species in the wetland and the stream. The USDA photographs at its Soil Map Website from September 14, 2014 (cf. <http://websoilsurvey.nrcs.usda.gov/app/> for the above address) show the intermediate stage of logging and the attached amateur drone photo shows the final grubbed status of approximately ten acres of the land above the national wetland and the Sterling Creek as of June 29, 2015 -- after the heavy snows and flash flood rains of the spring which almost certainly would have resulted in fill in the wetland and stream waters.

My personal conversation with the Alliance Archaeological Services owner (cf. email below) provides additional evidence of the timeline and of the lack of any storm water pollution control measures at the site subsequent to the logging and grubbing of the land by the permit applicant. The archaeologist also revealed that the permit applicant cleared the area with intentional disregard for the possible endangerment of the requisite archaeological studies because she verbally warned him about the area; his disregard of the logging, archaeological, and storm water protection protocols likely thereby threatened habitats of the endangered bat and other species, as well. The DEC was receiving multiple written assurances from the permit applicant throughout the period of June 2014 to May 2015 that the entire area was wooded, with the exception of the earlier mine location, and that the applicant would respect storm water pollution control practices; the controls apparently did not take place, as attested to both by the photographic evidence and the testimony of the archaeologist.

Please also consult the NFWS wetland finder maps as well as the DEC Christopher Construction map (cf. attached) which both clearly indicate the presence of a Federal palustrine wetland and protected Sterling Creek

bordering the steep slopes upon which the permit applicant intends to mine gravel sixty feet deep above the wetland. If the Army Corps of Engineers has written documentation of a subsequent formal delineation of the wetland to justify the permit applicant's quoting the Army Corps as saying "There is no wetland there," please provide the name and date of the relevant documents so that I may add a request for their inspection to my July 5, 2015 formal FOIA request of the Army Corps which has not yet been acknowledged by the Buffalo District.

I would like to suggest that the NFWS and the Army Corps and the EPA consult the information contained on the NFWS wetland finder map as well as the attached DEC-generated map so that your multi-agency review and recommendations may be coordinated and include the Federal wetland and protected stream. I remind all parties that the information from these government maps and photographs, supplemented by amateur drone photography, supports my earlier and instant formal complaints to the Army Corps and to the NFWS that there may have been violations of the Federal laws and regulations which your agencies are sworn to protect by investigation and enforcement. To these I add the instant complaints to all three agencies, to include as well the EPA.

To date, the Army Corps of Engineers has failed to reply to correspondence, formal complaints, and evidence presented in these matters since the latter part of June 2015. The Army Corps of Engineers representative who visited the LOM on June 12, 2015 has, by her own admission, only walked the Life-of-Mine area, never visiting the wetland below. Therefore, the allegations proffered by the permit applicant that "There is no wetland there" are, to date, unsubstantiated by the Corps with any documentation in any of its minimal correspondence to the undersigned to date.

I therefore expect to receive responses to my FOIA request of the Corps, and to my formal complaints in these matters before both Federal agencies, with all agencies performing due diligence in these important environmental matters where the DEC, as well, has failed to perform due diligence in the NYS SEQR process, as documented in detail in correspondence sent to both the NFWS and the Army Corps of Engineers.

- Dr. V. M. Fichera (PhD)

Adjunct Professor  
Binghamton University-SUNY

----- Forwarded message -----

From: **V. Fichera** <[vmfichera@gmail.com](mailto:vmfichera@gmail.com)>

Date: Thu, Jul 23, 2015 at 12:23 AM

Subject: Re: Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)

To: "Clancy, John M (DEC)" <[john.clancy@dec.ny.gov](mailto:john.clancy@dec.ny.gov)>

Cc: "Perazio, Philip (PARKS)" <[Philip.Perazio@parks.ny.gov](mailto:Philip.Perazio@parks.ny.gov)>, "Vandrei, Charles (DEC)" <[charles.vandrei@dec.ny.gov](mailto:charles.vandrei@dec.ny.gov)>, "[cjf9679@yahoo.com](mailto:cjf9679@yahoo.com)" <[cjf9679@yahoo.com](mailto:cjf9679@yahoo.com)>, "Bimber, David L (DEC)" <[david.bimber@dec.ny.gov](mailto:david.bimber@dec.ny.gov)>, "Nikki Waters, Alliance Archaeology" <[nwaters@alliancearchaeology.com](mailto:nwaters@alliancearchaeology.com)>, "Lynch, Kenneth (DEC)" <[kenneth.lynch@dec.ny.gov](mailto:kenneth.lynch@dec.ny.gov)>, "Mcginn, Barbara A (DEC)" <[barbara.mcginn@dec.ny.gov](mailto:barbara.mcginn@dec.ny.gov)>, Clint Halftown <[clint.halftown@gmail.com](mailto:clint.halftown@gmail.com)>, [tmtwoguns@verizon.net](mailto:tmtwoguns@verizon.net), [RachelPolansky@localsyr.com](mailto:RachelPolansky@localsyr.com), [neil@wayuga.com](mailto:neil@wayuga.com), Randy Lawrence <[tsterlin@twcny.rr.com](mailto:tsterlin@twcny.rr.com)>, [lsomers2@twcny.rr.com](mailto:lsomers2@twcny.rr.com), Lisa Cooper <[lcooper2@nycourts.gov](mailto:lcooper2@nycourts.gov)>

Dear John Clancy:

It was my impression in speaking to both Mr. Perazio of the Parks Service and Mr. Vandrei, a DEC archaeologist, that the OPRHP's recommendation is that the entire Life of Mine area be subject to the archaeological studies before the formal granting of a mining permit to ensure the process of preservation of possible Native American heritage artifacts and remains within the area of the LOM.

I should add that Ms. Nikki Waters of Alliance Archaeological Services, who performed the first two of the studies of the four required "phase" areas of the proposed Martville mine, informed me in a phone conversation on July 2, 2015 that, while she was engaged in the first onsite study last fall, she warned the mine operator not to log or grub the next planned area for investigation before she had the opportunity to conduct the second area study. She recounted to me her surprise to discover that her warning was not heeded: when she went to the site for the second study around April 2015, she discovered that the land had already been cleared, that no runoff protection berms had been established, etc. She did feel that, luckily, she was able to find enough undisturbed land to do the requisite diggings. Indeed, aerial photos of the site, both from the USDA on September 14, 2014 and from a private amateur drone operator on June 29, 2015, confirm her statements.

It would appear that to avoid a repetition of this (and any/all such applicant) operator's "misunderstanding" of the expected protocols, the DEC should follow the recommendations of its own archaeologist, as well as the Parks Service, that all permit applicants complete the requisite archaeological studies for the entire proposed Life of Mine area before a mining permit is granted, for the protection of Native American heritage, the land itself, and to ensure compliance with the SEQR process.

Among other interested parties, I have cc'ed on this communication the Cayuga Nation leaders with whom I have been in contact concerning these matters.

Yours truly,

Dr. V. M. Fichera (PhD)

Adjunct Professor  
Binghamton University-SUNY

On Wed, Jul 22, 2015 at 4:59 PM, Clancy, John M (DEC) <[john.clancy@dec.ny.gov](mailto:john.clancy@dec.ny.gov)> wrote:  
Hello Mr. Perazio. Thank you for your inquiry.

Our review on the above referenced mining permit application continues.

If a DEC mined land reclamation permit is issued, a permit condition would be included, specifically stating that an archeological investigation must be conducted in respect to cultural resources and reviewed/approved by NYS OPRHP prior to expansion of the mine into areas that have not yet been investigated.

Appropriate mitigation measures to protect cultural resources would be required, if and as needed, based on OPRHP's recommendations.

Thank you for the opportunity to clarify.

Respectfully yours,

John

**From:** Perazio, Philip (PARKS)  
**Sent:** Wednesday, July 22, 2015 1:26 PM  
**To:** Clancy, John M (DEC)  
**Cc:** Vandrei, Charles (DEC); [cjf9679@yahoo.com](mailto:cjf9679@yahoo.com); V. Fichera  
**Subject:** Martville Mine, Town of Sterling, Cayuga County (14PR3874 and 15PR02499)

Mr. Clancy,

I am contacting you regarding the above-reference project. We have reviewed archaeological reports for two segments of this property. However, it is our understanding that the life of mine permit under review by DEC encompasses a larger area than what we have reviewed. We would like to inquire whether DEC will require that the remainder of the permit area be subjected to archaeological investigation before the permit is issued or if a stipulation will be included that an investigation be conducted prior to expansion of the mine into areas that have not yet been investigated.

Thank you for your attention to this matter.

## **Philip A. Perazio**

Historic Preservation Program Analyst – Archaeologist

Division for Historic Preservation

### **New York State Parks, Recreation & Historic Preservation**

Peebles Island State Park, P.O. Box 189, Waterford, NY 12188-0189

[518-268-2175](tel:518-268-2175)

[Philip.Perazio@parks.ny.gov](mailto:Philip.Perazio@parks.ny.gov)

[www.nyparks.com/shpo](http://www.nyparks.com/shpo)



Overview Martville mine site - clearing and palustrine 6-

29-30.jpg

7-3546-00040 Christopher Construction Map.pdf

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**From:** Traci Neftleberg [<mailto:Neftleberg.Traci@epamail.epa.gov>] **On Behalf Of** Traci Neftleberg

**Sent:** Friday, July 24, 2015 8:01 AM

**To:** Montella, Daniel

**Cc:** Balla, Richard

**Subject:** Web Inquiry Assigned: Formal complaints re: 13181 Sanford Road, Martville, NY: filled national wetland and protected Sterling Creek waters; endangered species; USACE and EPA lack of due diligence

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You have been assigned a Web Inquiry document

(<notes://R2NOTES3/Apps/OPM/WebInquiry.nsf/0/D0F558511C6B066F85257E8B006D4219?OpenDocument>) -> 